Santa Clara Valley Water District
Property Ownership Study

HD
1291
S383.S36
2005
c.1
LIBRARY

HD1291 S383 S362005c.1

SANTA CLARA VALLEY WATER DISTRICT
LIBRARY
5750 ALMADEN EXPRESSWAY
SAN JOSE, CALIFORNIA 95118

Santa Clara Valley Water District Property Ownership Study

Prepared for the
Board of Supervisors
Of the County of Santa Clara

Prepared by the

Board of Supervisors Management Audit Division
County Administration Building, 10th Floor, East Wing
70 W. Hedding Street
San Jose, CA 95110

(408) 299-6436

September 1, 2005

County of Santa Clara

Board of Supervisors
Management Audit Division
County Government Center, East Wing
West Hedding Street
San Jose, California 95110-1770
(408) 299-6436 FAX 299-5004 TDD 993-8272
E-mail: Roger.Mialocq@bos.co.scl.ca.us

Contract Auditor: Harvey M. Rose Accountancy Corporation

September 1, 2005

Supervisor Pete McHugh, Chair
Supervisor James T. Beall Jr., Member
Board of Supervisors Finance and Government Operations Committee
70 West Hedding Street
San Jose, CA 95110

Dear Supervisors McHugh and Beall:

At the direction of the Board of Supervisors, we have completed the attached *Santa Clara Valley Water District Property Ownership Study*. This study was conducted pursuant to the Board of Supervisors' authority under Section 60-20 of the Santa Clara Valley Water District Act, which states:

"The Board of Supervisors of Santa Clara County shall, at the time and place established by said board of supervisors for hearing and adopting the budget for such county, hear and adopt the budget submitted by the district, making such additions thereto or deletions therefrom as said board of supervisors deems to be in the best interest of the district."

As part of reviewing the Water District's FY 2005-06 budget, and as a result of concerns raised by District officials regarding potential County liability as a result of this authority retained by the Board over the District's budget, the Board ordered this study on October 19, 2004. According to the Summary Proceedings for that meeting, the study was to review "County's potential responsibility and/or liability based on County General Fund contributions to purchases of real property for SCVWD's use, joint ownership of real property, or SCVWD's use of County property." The Board more specifically directed that this study address whether any property owned, controlled or used by the Water District remains in the County's legal ownership, as recorded in the official records of the County Recorder.

The audt scope included extensive review of County and Water District records pertaining to the 1968 formation of the Santa Clara Valley Water District, and the formation of predecessor districts, as well as minutes of the Board of Supervisors, the Water District and the predecessor agencies to the Water District. We also reviewed records of land transactions between the County and the predecessor agencies.

The primary focus of fieldwork, however, was to identify, using a database of County-owned parcels obtained by the Property Management Division of the Facilities and

Fleet Department, and parcel maps maintained by the Assessor's Office, County-owned parcels that were located adjacent to Water District-owned parcels, adjacent to Water-District owned easements, or adjacent to creeks or other bodies of water. We identified about 150 such County parcels, in about 120 locations in the County. We then physically inspected 49 of these locations, using parcel maps to identify the County-owned site, the adjacent District-owned site or easement, or the adjacent body of water. This inspection was designed to determine how the County property and adjacent properties were being used, and whether there were any conflicts.

Our review identified one of the 49 parcels where the Water District appears to be controlling or using County-owned property, based on a fence that closes off the property. However, our review also identified 21 additional "problem parcels" with other types of conflicts. Most of these instances involve small remnant parcels that appear to be of no use to the County, and may in fact create liability by their location adjacent to water courses. Some of these instances involved potential conflicts between the County and local cities over uses of County-owned property, and also included several locations where County-owned property could be put to alternative uses that would generate revenue through development. During this study, we also were informed by Department of Parks and Recreation staff of a potential problem regarding a County-maintained trail that has been found to cross some private parcels. Lastly, the 22 instances of "problem parcels" included cases where the County continues to own property that includes actual stream channels, even though it is the Santa Clara Valley Water District that is responsible for flood control in the County. We have made recommendations to address each of the 22 "problem parcels" identified, and also generally recommend that the Board of Supervisors pursue transferring stream channels the County owns to the Water District, while maintaining ownership of adjacent areas used for trails, parks, or other County purposes. Our recommendations would potentially generate one-time revenue, and reduce County liability by taking out of County ownership parcels adjacent to water courses which don't appear to serve any useful County purpose.

Both the Water District and the County Roads Department provided written responses to this audit, which are provided at the end of the document. We would particularly like to thank the Roads Department for its assistance with some technical areas of this study involving review of parcel maps and descriptions, and the Assistant Assessor, for providing access to parcel maps and other technical assistance on this study.

Respectfully Submitted,

Roger Mialocq

Roger Mialocq
Board of Supervisors Management Audit Manager

C:
Supervisor Alvarado
Supervisor Gage
Supervisor Kniss

Project Staff:
Jeff Segol

Table of Contents

Audit Scope and Methods 1

History and Property Ownership of the SCVWD 2

Review of Cash Advances to SCVWD Predecessors 6

County and Water District Land Transactions 7

Observations of County and Water District Adjacent Lands 8

Response of the Santa Clara Valley Water District 25

Response of the Roads Department 26

Audit Scope and Methods

On October 19, 2004, the Board of Supervisors directed the Management Audit Division to conduct a special study regarding the Santa Clara Valley Water District. The subject of the study, according to the Summary of Proceedings of the meeting prepared by the Clerk of the Board, was "County's potential responsibility and/or liability based on County General Fund contributions to purchases of real property for SCVWD's use, joint ownership of real property, or SCVWD's use of County property." The Board more specifically directed that this study address whether any property owned, controlled or used by the Water District remains in the County's legal ownership, as recorded in the official records of the County Recorder.

Accordingly, the Management Audit Division took the following steps to conduct this study:

On November 30, 2004, Management Audit Division staff held an entrance conference with representatives of the Santa Clara Valley Water District, to describe the study's scope, answer questions about the study and gather information from District records to assist in the study.

Subsequent to the entrance conference, the Management Audit Division reviewed County and District records regarding the subject of the study. These included records maintained by the Clerk of the Board's Office pertaining to the formation of the Santa Clara Valley Water District in 1968, and the formation of its predecessor flood control and water conservation districts, records related to land transactions between the County and the Water District and the County and its predecessor districts, as well as minutes of meetings of the Board of Supervisors and the previous County-governed flood control district regarding these subjects. We also reviewed records maintained by the Water District regarding these subjects, including meeting minutes of the District immediately following its formation in 1968, minutes of the predecessor water conservation districts, and documents from the period leading up to the Water District's formation, such as reports from an orientation committee established leading up to the inauguration of the Water District.

We also researched the basis for land transactions that had occurred between the County and the predecessor districts to the Santa Clara Valley Water District, based on a list of land transactions provided by the Water District which it said occurred prior to 1968, when the Water District was formed. These transactions included acquisitions by the County of land from the predecessor districts, and transfers of land from the County to those districts.

Lastly, using a database of County-owned parcels obtained from the Property Management Division of the Facilities and Fleet Department, we identified, using parcel maps maintained by the Assessor's Office, County-owned parcels that were located adjacent to Water District-owned parcels, adjacent to Water District-owned easements, or adjacent to creeks or other bodies of water. We identified about 120 such locations in the County, with perhaps 150 County-owned parcels. We then visited 49 of these locations, using the parcel maps to identify the County-owned site, the adjacent Water

District-owned site or easement, or the adjacent body of water. During the visit, we determined through visual inspection how the respective properties were being used or how the County-owned property related to the adjacent stream or other watercourse. Based on these visual inspections, we identified 22 instances of so-called "problem parcels," defined as situations where there was some sort of conflict between one or more County-owned parcels and water courses, or between County-owned parcels and adjacent Water District-owned property or easements. An additional problem with some private parcels that are crossed by a County-maintained trail was identified by Department of Parks and Recreation staff. These 22 instances comprise the bulk of this report. We note that only one of these instances reflects a situation where the Water District appears to be controlling or using property legally owned by the County. In addition, the trail problem identified involved property that County parks staff believed was controlled by the Water District, based on maps provided by the Water District that accompany a lease of District lands to the County for recreational purposes, when in fact some property in question that is crossed by a County-maintained trail is still in private ownership. Most of the instances identified involve small remnant parcels that appear to be of no use to the County, and may in fact create liability for the County, due to their location adjacent to water courses. The review also identified potential conflicts between the County and local cities over uses of County-owned property, as well as several locations where it appears that property owned by the County could be put to alternative uses that would generate additional revenue for the County through development. Lastly, we identified a number of instances where the County continues to own property that includes actual stream channels, even though it is the Santa Clara Valley Water District that is responsible for flood control in the County. Because the Water District has this role, we recommend the Board of Supervisors pursue transferring stream channels the County owns to the Water District for other land or consideration, while maintaining County ownership of adjacent areas acquired and used for trails, parks or other County purposes. Specific instances of County ownership of stream channels are discussed later in this report.

During the course of our fieldwork, we also consulted on several occasions with County Counsel regarding various legal issues related to the subject of this report.

Based on the fieldwork, we prepared a draft report, and conducted an exit conference with the Water District staff. Following the exit conference, we prepared a final report, which was distributed to the Water District, the Department of Parks and Recreation and the Roads and Airports Department, each of which had involvement with various properties discussed in this report. The report was also provided to the Property Management Division of the Facilities and Fleet Department, which has general responsibility for managing County-owned and leased property. Each of those entities was permitted to provide a written response to this report, and the responses are attached at the end of the report.

History and Property Ownership of the Santa Clara Valley Water District

What is now the Santa Clara Valley Water District resulted from mergers involving four predecessor agencies. The dates of formation of each District and the dates of mergers that ultimately formed the present District are shown in the table on the following page.

EVOLUTION OF THE SANTA CLARA VALLEY WATER DISTRICT 1929 TO 2005

	District Name	Acrinym	Formed	Merged with SCVWD	Merged with SCVWCD
(1)	Santa Clara Valley Water Conservation District	SCVWCD	1929	1968	
(2)	South Santa Clara Valley Water District*	SSCVWD	1938	1987	
	* SSCVWD name changed to Gavilan Water Conservation District				
(3)	Central Santa Clara Valley Water Conservation District	CSCVWD	1949		1954
(4)	Santa Clara County Flood Control and Water Conservation District	SCCFCWCD	1951		1968
(5)	Santa Clara Valley Water District	SCVWD	1968		

The first of these agencies, the Santa Clara Valley Water Conservation District, was formed by a vote of County residents in November 1929 under State law. The Santa Clara Valley Water Conservation District, which originally encompassed most of the northern and central portions of the County, was formed for the purpose of maintaining the groundwater supplies within its boundaries, principally by building dams on County streams for the purpose of capturing winter rains and runoff for subsequently release into the streams, where it would then percolate into groundwater basins for subsequent pumping for crop irrigation and domestic use.

The second agency, the Central Santa Clara Valley Water Conservation District, covered what is now South San Jose and the Coyote Valley, extending to an area just south of Morgan Hill, was formed for similar purposes in 1949, and merged with the Santa Clara Valley Water Conservation District in 1954.

A third agency for groundwater replenishment, the South Santa Clara Valley Water District, which subsequently changed its name to the Gavilan Water Conservation District, was formed in 1938.

These water conservation agencies were responsible for building all of Santa Clara County's dams and reservoirs, such as Lexington Reservoir, Anderson Reservoir and Calero Reservoir, and also constructed percolation ponds in various areas of the County to which water from the dams was released to percolate into underground aquifers for later pumping. An example of these percolation ponds are the ponds along Los Gatos Creek, north of Highway 17 in the City of Campbell. The Water Conservation Districts acquired land and constructed the facilities. While the purpose of these dams was to capture water for conservation and use, they also provided some flood control. According to the book *Water in the Santa Clara Valley: A History*, prepared by the California History Center at DeAnza College, Lexington Reservoir on Los Gatos Creek was completed just before a major flood in late 1955, the implication being that its completion kept the flood from being much worse. The book also states that a severe 1958 flood would have been "disastrous" had not the Anderson and Coyote dams on Coyote Creek been completed in 1952.

The fourth entity forming what is now the Santa Clara Valley Water District was the Santa Clara County Flood Control and Water Conservation District, which was formed by the County under State legislation approved in 1951. The Flood Control District was established as a dependent special district of the County, with the members of the Board of Supervisors serving as its Board of Directors. Prior to the formation of the Flood Control District, there appears to have been no coordinated flood control function in the County. According to *Water in the Santa Clara Valley: A History*: "Each city handled its own drainage differently, based on its past needs, until the rapid urbanization began. Subdivisions were often constructed with only the streets to act as storm drains." As an example, records reviewed for this study found that as early as 1875, the County had acquired land along Los Gatos Creek between Delmas and Sunol streets in San Jose for the purpose of flood control improvements on the creek. County budgets in the late 1940s and early 1950s also reflect small sums in a line item for "cleaning creeks," apparently an effort to do limited maintenance on existing natural channels for flood protection. Once the Flood Control District was formed, and after

several false starts due to the defeat of bond issues, improvements began to be constructed in different subzones of the Flood Control District. Minutes of the Flood Control District indicate that it purchased land for various flood control improvements, and also accepted land and easements from private property owners for flood control improvements needed to support development in the County. A review of budgets from the start of the Flood Control District in 1952-53, to 1967-68, just prior to the creation of the existing Water District, identified total capital expenditures for flood control projects of nearly $28 million.

In addition to its role in flood control, the County-governed Flood Control District also became the primary vehicle for the importation of water from the California Water Project into Santa Clara County in the 1960s, according to *Water in the Santa Clara Valley: A History*. A 1963 bond issue provided financing for facilities related to imported water, including the Rinconada Water Treatment Plant in Los Gatos, the Penitencia Treatment Plant in east San Jose, and a system of pipelines to carry water from the State's South Bay Aqueduct to other portions of the County.

The Santa Clara Valley Water Conservation District, and the Santa Clara County Flood Control and Water Conservation District merged in March 1968. According to *Water in the Santa Clara Valley: A History*, the merger was promoted primarily by the magnitude of the project to bring imported water into the County, both from the State Water Project, and subsequently from the federal Central Valley Project through its San Felipe unit. The Gavilan County Water District did not become part of the combined district at that time, but subsequently merged into what is now the Santa Clara Valley Water District in 1987.

The 1968 merger occurred under terms of 1967 amendments to the 1951 act, which established the County-governed Flood Control District. Section 31 of the amended law stated:

"Title to all real and personal property of any water conservation district which, pursuant to the terms of this act, is consolidated with the Santa Clara County Flood Control and Water District, shall upon such consolidation vest in the Santa Clara County Flood Control and Water District, and all funds on hand or moneys due or to become due to such water conservation district shall be paid into the county treasury to credit of the zone consisting of the area of such water conservation district or zone thereof."

The amended law also addressed the composition of the merged district's board of directors, establishing the system of five members elected from the five supervisorial districts, and two members appointed by the Board of Supervisors, which is the system that remains in place today.

The amended law did not specifically address the status of land owned by the former dependent Flood Control District whose directors were the Board of Supervisors, and none of the materials we reviewed from the Clerk of the Board or the Water District addressed the status of that land. However, County Counsel has concluded that since the consolidated district formed in 1968 reflected a merger of the water conservation

district and the County-dependent Flood Control District, and because the new district was formed by amending the 1951 law that created the Flood Control District, the lands owned by the Flood Control District automatically came under the ownership of the combined district.

Review of Cash Advances to SCVWD Predecessors

The Board of Supervisors October 19, 2004 action requesting this study included an assessment of "County General Fund contributions to purchases of real property for SCVWD's use . . ." Accordingly, as part of our review of records related to the Water District, and its predecessor agencies, we looked for evidence of any cash advances that had been made by the County General Fund to those agencies. The review included examining annual County financial statements from the late 1930s to a the early 1970s, when the present Water District was formed, as well as the aforementioned review of historical records maintained by the County and the Water District.

While the financial statements did not provide any information on advances, an examination of minutes and other records from the early and mid-1950s did show that advances were made by the County General Fund to predecessor agencies of the current Water District. The earliest of the references we were able to find in County records was for September 8, 1952, where minutes of that day's Board of Supervisors meeting show the Board approving a temporary transfer from the County's General Reserve Fund to the recently-created Santa Clara County Flood Control and Water Conservation District. On the same day, a resolution was also approved providing a $30,000 temporary transfer from the General Reserve Fund to the Santa Clara Valley Water Conservation District.

From that point in 1952, to approximately the end of 1958, advances from the County reserves to the Santa Clara Valley Water Conservation District occurred periodically. The resolutions approved by the Board of Supervisors stated that the advances were provided against the subsequent apportionment of property taxes to the Water Conservation District, from which the advances would then be repaid. These advances were reported by the Santa Clara Valley Water Conservation District as part of the financial reports provided in its monthly meetings, and included as an attachment to the meeting minutes. The first such mention in the Conservation District's records was in December 1952, when the monthly financial report includes among "Receipts During December" an item of "Tax Proceeds (Borrowed)" totaling $15,000. This amount is matched by a parallel resolution from the Board of Supervisors on December 8, 1952, approving an advance to the Conservation District from the County General Reserve Fund. Subsequent monthly reports showed repayments of these advances.

The reason why the Santa Clara Valley Water Conservation District needed such advances during this period is not entirely clear, although the District was engaged in a massive construction effort during this time that severely strained its resources, including construction of both the Lexington Dam and Reservoir on Los Gatos Creek, and Anderson Dam and Reservoir on Coyote Creek, as well as construction of several canals to better distribute water for percolation purposes. The Lexington Dam project was particularly difficult financially, in that delays in starting it resulted in costs that

were much higher than anticipated when the project was planned, including an arbitration process following project completion that resulted in the contractor being awarded an additional $326,000 payment for additional costs that resulted from project design changes and other Water Conservation District-caused delays. During this period the Water Conservation District had frequent periods of negative cash flow in its General Fund and other funds, necessitating the advances to pay operating costs.

Using County and Santa Clara Valley Water Conservation District minutes, we attempted to determine if monies advanced to the Water Conservation District by the County had been repaid. An exact accounting is not possible, because the records in question are not fully complete. The Water Conservation District monthly financial summaries from December 1952 through December 1958, plus additional amounts reported in County records, reflect advances made to the District of approximately $800,000, while repayments of advances total about $850,000. Based on this limited information, we conclude that the advances made to the Water Conservation District and the County Flood Control District in the 1950s were probably fully repaid.

County and Water District Land Transactions

As part of our review of property issues between the County and the Santa Clara Valley Water District, we requested any information the Water District had on land agreements or land transactions between the Water District and the County. Because our initial concern was the current status of lands that were the subject of transactions between the County and the flood control and water conservation agencies that were the predecessors of the present Water District, we requested information on land transactions that occurred prior to 1968, when the predecessor agencies merged into what is now the Santa Clara Valley Water District. The Water District was able to provide this information from its property database, which includes the book and page in the County Recorder archives that memorialize each transaction. The Water District provided information on 50 transactions. We researched these records to determine the basis for each of the transactions, and have concluded that each occurred for a logical governmental purpose. We also concluded that none of the parcels that were originally acquired by the County through these transactions for what are now Water District-related purposes currently remain in the title of the County. Of the 50 transactions, 21 were acquisitions of land by the County from the Santa Clara Valley Water Conservation District for road projects, four were acquisitions of land by the County from that District for parks projects, one was an acquisition of land by the County from the Santa Clara Valley Water Conservation District for drainage purposes, prior to the establishment of the Flood Control District, one was an acquisition by the County from the Flood Control District for road work, and two were abandonments to the County by the Flood Control District of right-of-way no longer needed for flood control projects. In addition, the County-dependent Flood Control District had 20 transactions where it acquired land from the County for flood control projects, primarily via acquisition of tax-deeded parcels. There was also one acquisition of land by the Santa Clara Valley Water Conservation District from the County, for construction of one of its irrigation canals.

Observations of County and Water District Adjacent Lands

As directed by the Board on October 19, 2004, the purpose of this study was to assess the County's "potential responsibility and/or liability based on County General Fund contributions to purchases of real property for SCVWD's use, joint ownership of real proeprty, or SCVWD's use of County property.

The task plan for this study originally envisioned identifying real properties where joint ownership had occurred, or where SCVWD use was occurring, by a list-matching procedure, comparing a list of County-owned property with a list obtained from the Water District of its property.

However, at the entrance conference for this project, Water District staff advised us that its database of property it owned did not identify Water District-controlled property by Assessor's Parcel Numbers, as did a list of County-owned property we obtained from the Property Management Division of the Facilities and Fleet Department. Instead, Water District properties are identified by a unique system of Water District facility numbers. The Water District also advised that it did not have electronic records on the ownership history of each of its properties, but maintained a separate paper file on each parcel. We were also informed that the Water District estimates it has more than 13,000 property files, including more than 20,000 acres.

Based on this meeting, Management Audit Division staff devised a separate procedure to examine in person areas where County property is adjacent to Water District property, and to determine if any conflicts were occurring. We obtained from the Assessor's Office an electronic version of the Assessor's Parcel Maps it maintains of every property in the County. Using the listing of County-owned properties obtained from the Property Management Division, we examined each parcel map that included a County-owned property. Because the parcel maps also identify lots owned by other government agencies, including the Santa Clara Valley Water District, we were able to identify County-owned properties that adjoined Water District-owned parcels, or adjoined streams or other watercourses within the County.

This process identified about 120 locations, with perhaps 150 County-owned parcels, where County-owned property adjoins Water District property, or adjoins a creek or other watercourse. Of the 120 locations, Management Audit Division staff examined 49 in person, using the parcel map to locate and identify, as best as possible, the properties in question. The properties were then observed in terms of how the County property and adjoining District or stream property were being used, and whether any conflicts were observed. All properties were viewed either from the County's property, from public streets and sidewalks, or from public hiking trails, so that no unauthorized entry on to Water District property occurred, and Management Audit staff could conduct this work unaccompanied by District representatives.

Of the 49 locations viewed, 22 were identified as parcels with some sort of problem that should be addressed by the County. In only one of the 22 was the problem encroachment by the Water District on County property, in the form of a District-labeled fence closing off property shown on the parcel maps as being County-owned.

The other problems identified were principally situations where the County owns properties that appear to provide no benefit to the County, and possibly create liability due to their proximity to creeks or other watercourses. These assessments were made by Management Audit staff based on observations of these properties during the first half of Calendar Year 2005, and do not account for as yet unidentified future potential property uses, or future increases in property values. The assessments also do not account for potential affirmative defenses to potential liability the County may have based on the current use of these properties. Accordingly, we recommend the Board request an assessment by County Counsel of potential liability issues related to the ownership of any unused surplus properties it chooses to retain. We also identified a number of properties that appear to provide opportunities for revenue generation by the County, if they were developed. During an interview with Department of Parks and Recreation staff, we were also advised of a problem related to a County-maintained trail that was supposed to cross only Water District-controlled land, but in fact crosses two privately-owned parcels. Parks staff said they believed that the parcels in question were under District ownership, based on their inclusion in a map of lands being leased to the County by the District for recreational purposes. The maps had limited detail, and the lease did not include Assessor's Parcel Numbers, legal descriptions or other more detailed identifiers of the parcels being leased, and the trail that is now of concern existed prior to the agreement. That problem is also reported, here although we did not visit the site in person. Detailed descriptions of the properties viewed and our recommendations for actions regarding them are provided starting on the next page. In each of these cases, we have identified the problem we have found, and recommended a possible solution.

Probably the most significant general finding of this review is that, of the 22 locations identified as having some sort of problem, 12, or 54.5 percent, involved locations where the County appears from Assessor's parcel maps to own part or all of a creek channel. In our view, County ownership of these waterways, unless some significant purpose beyond flood protection or water management would be achieved, is inconsistent with the intent of the Santa Clara Valley Water District Act. The Act states that its objects and purposes are "to authorize the district to provide comprehensive water management for all beneficial uses and protection from flooding within Santa Clara County." Based on the Water District's responsibility in this area, we recommend that in instances where the County owns a creek channel or other waterway, it should be sold to the Water District or exchanged for other property or consideration.

Furthermore, based on our review of only 49 locations, the County should conduct a comprehensive analysis of all properties it owns, to identify any other properties that include creeks or other waterways, and negotiate an agreement with the Water District for the sale or exchange of such properties for appropriate consideration in accordance with the County's costs and the value of the properties. If the County is unable to negotiate an agreement with the District for the transfer of all County-owned creeks, channels and other waterways to the District, the County should identify those parcels which are of no public use or benefit to the County, and return such parcels to the tax rolls by offering them for sale to adjacent land owners or the general public.

During the exit conference for this study, District representatives claimed that while flood control is a substantial part of the District's mission, flood control is not a mandated responsibility of the District, and the District is therefore not compelled to own all streams for flood control purposes. District staff cited other language in the District Act, which states that the District "may take action . . . to protect Santa Clara County from flood and storm waters of the district . . . including tidal flood waters and the flood and storm waters of streams that have their sources outside the district, but flood into the district." We disagree with the District's interpretation, because it would lead to a fragmentation of responsibility for and powers over flood control in the County, rather than providing the "comprehensive water management" envisioned by the District Act. The District's position also seems incongruous, given the recent disputes between the Board of Supervisors and the Water District regarding authority over District financial matters, and the concerns expressed by the District regarding the fragmentation of responsibilities, authority and liability that prompted the Board of Supervisors to request this study.

SCVWD/Watercourse/County Property Conflict Descriptions

1. 412-09-047/412-09-048—Campbell Park, Campbell

These are two County-owned parcels that abut Los Gatos Creek on the east and East Campbell Avenue on the north. Combined with surrounding properties owned by the City of Campbell, visual inspection indicates they comprise the City-operated Campbell Park. The adjacent creek is owned by the Water District, which acquired it through the merger of the former County-operated Flood Control District and the former water conservation districts into the present Water District. The creek property was transferred from County ownership to ownership of the Flood Control District in April 1962. The Water District has a cooperative agreement with the County and other jurisdictions through which the creek flows to help maintain trails along its banks. The park property is not fenced off from the creek to prevent someone from accessing the creek and potentially injuring themselves, particularly since there is a significant fall-off of the creek bank a short distance downstream from the park, which could lead to a serious injury if someone was swept down it.

Review of records in the Clerk of the Board's Office show that there were two separate transactions in which County-owned property was leased to the City of Campbell. On December 12, 1955, the Board of Supervisors approved a lease for property that was identified by Roads Department staff, based on legal descriptions accompanying the lease document, as most of the current parcel 412-09-047. This property was leased to the City for its use as a corporation yard "or for such other purpose as public interest and necessity may hereafter dictate." This lease was to run for 20 years, at a rent of $5 per year, and the City was to have the option to renew the lease upon the same terms, provided that such option be exercised by the giving of a written notice at least 30 days prior to expiration of the original lease. Neither the Property Management Division of the Facilities and Fleet Department, nor the County Department of Parks and Recreation, have any record of receiving such a written notice to renew the lease. There is no sign of the corporation yard that was the original purpose of the lease, and the parcel is now being used as the site for basketball courts in the park, and possibly some of its grassy areas. The description we provided from the lease document, according to Roads staff, did not include a small triangular area at the south end of the property, which visually is also part of the existing park.

In a separate transaction, additional land was leased to the City for park purposes in August 1959. Our review also found that the 1959 lease from the County to the City was for 25 years, with the City having the option to renew the lease for an additional 25 years by providing written notice to the County. The lease also provides for termination by mutual agreement of the parties at any time. Neither the Clerk of the Board nor the Property Management Division nor the Department of Parks and Recreation were able to provide documents demonstrating that the 25-year optional extension provided for by the 1959 lease had been exercised by the City of Campbell as required in 1984.

Furthermore, the history of the County's ownership of the two parcels, and how those parcels came to be included as part of the park, is not clearly documented.

First, the 1955 lease documents for the Campbell corporation yard site, what appears to be parcel 412-09-047, provide a legal descrription of the property that refers not to previous documents from the County's acquisition of the property, but to two private sales occurring in 1887, 1896 and 1899. Assessor staff assisted us in identifying a 1922 acquisition by the County of a trapezoidal parcel that comprises about the western 60 percent of parcel 512-09-047. The source of the County's ownership of the remaining 40 percent of this parcel could not be determined. There is also no documentation as to the purpose of the County's original acquisition of the property, although its location suggests it may have been acquired in conjunction with the construction of the bridge that crosses the creek at this point. The current bridge was constructed in 1940.

As for the land leased to the City in 1959, the Assessor's computer system cited as the ownership document for this parcel a grant deed reflecting the 1962 transfer of land from the County to the former Santa Clara County Flood Control District. We asked staff of the Roads Department to compare the description of the property in the 1962 transfer documents and the documents for the 1959 lease to the City of Campbell. Roads staff reported that the 1962 transfer documents included the property leased to the City in 1959. The descriptions of those properties, and a hand-drawn map that accompanied the lease agreement, appear to refer to land that is part of the channel of Los Gatos Creek itself, rather than any land that is part of the existing developed park. The descriptions, according to Roads staff, do not appear to refer to current parcels 412-09-047 or 412-09-048, which are part of the existing developed park. Based on County Counsel's conclusion that properties owned by the County-governed Flood Control District became part of the Santa Clara Valley Water District when that entity was created by merging the flood control district with the existing water conservation districts, the lease signed by the County with the City of Campbell in 1959 appears to be for properties now controlled by the Water District, not the County. It also appears that this 1959 lease may have erroneously ended up being for property other than that which comprises the existing park.

Neither the description in the 1955 lease to the City of Campbell, nor the description in the 1959 lease to the City, according to Roads staff, included the parcel now identified on Assessor's maps as 412-09-048. We conducted additional research in the Clerk of the Board's records, but were unable to identify any additional transactions between the County and the City involving the existing parcel 412-09-048, or involving Campbell Park. With the assistance of the Assessor, we were able to identify the acquisition of the parcel by the County in 1923, but not the reason the County acquired the property. However, based on the research we have been able to do, it appears that the City of Campbell may be operating Campbell Park on County property, a portion of which was never properly leased to the City, and another portion for which the lease was never properly renewed.

In conclusion, we have one portion of the park, as we observed it in operation today, for which we were unable to identify a valid lease document between the County and the City, and another portion for which we were unable to document the basis of the County's ownership. Based on this research, the status of these properties needs to be clarified. We recommend that County Counsel and the Property Management Division of the Facilities and Fleet Department be directed to conduct further analysis regarding

the County's ownership of these properties, and the status of any lease agreements between the County and the City for the park properties.

Assuming the County retains ownership of these properties, and assuming the leases with the City were renewed, some new arrangement for part of the Campbell Park property needs to be made no later than August 2009, when the original 1959 lease for a portion of the property expires. Although the 1955 lease requires the City of Campbell to have insurance for its use of the property; the 1959 lease requires both the County and the City to carry liability insurance; and both leases require the City to hold the County harmless for liability related to the lease, the County would more fully protected by relinquishing its ownership of these properties, which are being used as a municipal park. We recommend that the County sell or exchange the park properties to the City for other property or consideration.

2. 284-08-008—Meridian Avenue, City of San Jose

This is a triangular 4,792-square-foot parcel bounded by Meridian Avenue, Los Gatos Creek and a private property. County Recorder's records indicate that the County acquired this property in 1958 for free as right-of-way, and visual inspection indicates that the acquisition was probably related to construction of the bridge that crosses the creek on Meridian Avenue at this point. The City of San Jose owns the creek channel itself at this point, and a portion of the Los Gatos Creek Trail maintained by the City runs along one bank. The Water District has an easement for the creek channel across the City-owned portion of the creek and over other properties adjacent to the County's property for maintenance purposes. As this property serves no useful purpose to the County, and the access it provides to the creek could create liability, we recommend that this property be sold or exchanged to the City, the Water District, or to an adjacent private property owner for other property or consideration.

3. 393-36-023/393-36-024/393-36-017/393-36-004, near Crestbrook and Merribrook drives, City of Saratoga

Similar to the previous discussion, these are parcels that comprise portions of Saratoga Creek, this time in the vicinity of Crestbrook Drive and Merribrook Drive in Saratoga. These parcels were dedicated to the County for drainage purposes in 1956, in conjunction with County approval of the subdivision tract map for the surrounding housing development. In this section of the creek, the Water District also owns one parcel, and District staff reports having easements on the County-owned properties. Similar to the previous discussion, there does not seem to be a reason for the County to own the parcels, as responsibility for maintenance of the creek for flood control purposes is a Water District responsibility. These parcels should be exchanged with the Water District for other property or consideration.

4. 403-23-059, near Ravenwood Drive, Saratoga

This 871-square foot triangular property is near San Tomas Creek in Saratoga. The Water District owns this creek. This property was given to the County in 1957 for storm drainage purposes in conjunction with the adjacent housing development. Although

there is no public access to this property, making liability less of a concern, there does not seem to be a reason for the County to continue to own this parcel. It should be exchanged with the Water District for other property or consideration.

5. 326-01-034, Peninsular Drive, Cupertino

This 13,000-square-foot property is a closed extension of Peninsular Avenue, at its intersection with Barranca Drive in Cupertino. This property dead ends into Stevens Creek, which borders the lot on the northwest. Several Santa Clara Valley Water District owned parcels and easements run nearby, for Stevens Creek itself, for flood control structures adjacent to the creek, and for water lines. The property is also just over a berm from Interstate 280. Although this property is owned by the County, at the time Management Audit staff viewed the property in early 2005, it was closed off by a fence indicating control of the property by the Water District. Should the County so desire, it appears this property could be profitably sold, either as an individual lot for home construction, or to the owner of the property that is adjacent to and northeast of this property. This adjacent property at the time of our review had a home under construction or renovation, and the homeowner appeared to be making limited use of the County parcel, which was not fenced off from his lot, for materials storage and other uses. Although this property is shown on the Assessor's parcel maps and the Assessor's computer system as County-owned, the source of the County's ownership could not be completely determined. Because the acquisition predates the start of the Assessor's current parcel information computer system, that system does not list a recorded document as the basis for County ownership. Additional research by the Assessor pointed to the property being among a number of properties acquired by Cupertino through eminent doman in the late 1960s. However, those acquisitions appear to have been for an area further north, near DeAnza College. Additional research we conducted at the Cupertino city offices strongly suggests that this property was transferred to the County by the State as leftover right-of-way from construction of Interstate 280. We base this conclusion on maps of the freeway right-of-way we reviewed at the Cupertino city offices that identify other properties in this general area, but not this specific parcel, as having been so transferred. We recommend that the County seek compensation for this property from the Water District, via a cash payment, exchange of other property or other consideration.

6. 336-09-016, Magdalena Drive, City of Los Altos

This 871-square-foot triangular property fronts on Magdalena Drive in Los Altos, directly adjacent to the First Baptist Church and Los Altos Christian School. The property is between a church parking lot and Permanente Creek, where the Santa Clara Valley Water District has easements for creek access. District staff also reports having an easement across the County-owned property. The property was acquired by the County in 1965 for road work on Magdealena Drive, which crosses the creek. Although it was not completely clear from visual inspection, it is also possible that the property is actually now being used for a driveway to access the church property, or is adjacent to the driveway. This could create liability for the County in the event of an accident involving the driveway. Because this property serves no useful purpose to the County,

it should be sold or exchanged for property or other consideration, probably to the adjacent church owner.

7. 137-10-128, Matadero Avenue, between Josina Avenue and Tippawingo Drive, City of Palo Alto

This is a narrow 4,486-square-foot lot directly adjacent to Matadero Creek. The Water District has easements on properties along the creek, including an easement across most of this parcel, according to District staff. County Recorder records show that the property was acquired by the County in 1965 on behalf of the then-Department of Public Works. It appears that this property was probably acquired in relation to road work, as the property is close to a 1929 bridge across the creek on Matadero Drive. This property is not fenced, and therefore provides access to the creek, creating a potential liability for the County. Because this property serves no useful purpose to the County, it should be sold or exchanged for other property or consideration, either to the Water District or to the owner of a property that is adjacent to the south. If the property continues in County ownership, it should be fenced and the County's ownership posted.

8. 290-22-154, southwest corner of Benton Street and Lawrence Expressway City of Santa Clara

This corner lot of more than one acre is adjacent to Calabazas Creek, and was acquired in 1962 for construction of Lawrence Expressway, according to County Recorder records. The property is adjacent to The Church in Santa Clara. The property is fenced, but a gate between the County's property and the church property is continuously left open. The County should pursue revenue-generating opportunities from the site that has frontage on two major thoroughfares, by either leasing or selling the property for development. A similar-size lot across Benton Street from this parcel has been developed with a gas station and a mini-mall.

9. 375-22-001, west of Lawrence Expressway, City of Santa Clara

This is a trapezoidal 31,800-square-foot lot between the expressway and Saratoga Creek, which was acquired in 1964 in conjunction with expressway construction and maintenance, according to County Recorder records. The creek is owned by the Water District in this stretch. A visual inspection indicated that the property is being used by the Roads Department for temporary storage. Items found on the property included streetlight standards and a large pile of used asphalt. We address this property not because of its use, which appears to be appropriate, but because of a concern about public access to the site. A section of the Saratoga Creek trail dead-ends into the property. Because the trail at this point is wide enough to permit vehicular use, a gate has been put up blocking most of its width. However, the gate is not wide enough to prevent pedestrian's from trespassing on to the County property. This creates a concern regarding the potential for theft from the property, or injuries to persons trespassing on the site. We also note that at the time we observed the property in early 2005, a County-owned backhoe was also parked on the site, creating a further opportunity for theft or vandalism of the County property. We recommend that the existing fencing be

enhanced to block access to this property by pedestrians as well as vehicles. The property should also be posted with no trespassing signs declaring the County's ownership.

10. 237-14-081/237-05-020, Schallenberger Road, City of San Jose

These two properties are northeast and across the street from the Roads and Fleet Operations headquarters. They total approximately three acres in size, and appear from visual inspection to include steep bank areas above Coyote Creek as well as portions of the creek channel itself. District staff reports that it has easements over most of these two properties. In addition, downstream from these properties to the northwest, the Water District owns a parcel that is just east of Interstate 880 and north of Brokaw Road near the creek channel. The District owns portions of the creek channel farther north, near Montague Expressway, accorrding to parcel maps.. The larger of the two County-owned parcels, about two acres, was acquired by the County in 1962 for construction of Schallenberger Road. The smaller property was deeded to the County by the State in 1954, having been acquired by the State the previous year for road work on what is now Interstate 880, which is nearby. These parcels do not appear to be developable because they are so steep and so close to the creek. The property is not fenced, and from our observation appeared to be a regular site for transient encampments, which could create liability for the County due to injuries to transients, fires set by transients, etc. Because these properties serve no useful purpose to the County, they should be liquidated. The larger of the two properties should be sold or exchanged to the Water District for other property or consideration. The smaller property could be sold or exchanged to the adjacent property owner, Knight-Ridder Inc., which owns adjacent parcels on Ridder Park Drive that are the headquarters for the San Jose Mercury-News.

11. 678-02-025/017/020/016/007, 678-04-004/011/012/013/014, 678-07-004/6/15/16/17, 678-05-022/051/060, 678-08-022/029 Coyote Creek near U.S. 101, Bernal Road and Silver Creek Valley Road, City of San Jose

These are parcels adjacent to and in some cases including the channel of Coyote Creek in South San Jose. These properties are portions of what is known as the Coyote River Parkway, part of the County park system, which provides hiking trails and other amenities in conjunction with the creek. These parcels were all acquired in 1969, 1970 and 1971 to become part of the parkway. Acquisition was from private owners and in some cases from the State, which had acquired the properties in conjunction with construction of U.S. 101 in this area. The ownership of land along Coyote Creek between the County and the Water District differs, depending on which section of the creek is involved. In the section that is just north of Metcalf Road, stretching north to near Menard Drive, a portion of the creek channel itself, according to Assessor's maps, appears to be owned by the Water District, with the County owning land on either side. This area includes the Parkway Lakes property. Farther north, in the area just south of Silicon Valley Boulevard and west of Basking Ridge Avenue, the County owns the creek channel as well as the banks. North of Silver Creek Valley Road, in an area where the County has established a biking and hiking trail along the creek that also includes abandoned right of way and a bridge over the creek on Piercy Road, the Water District

again owns the creek channel itself, while the County owns land on either bank where trails have been constructed.

The basis for these ownership differences is not completely clear, although it may be related to the proximity of the creek to other development, and to any measures the District has taken to prevent flooding. In the section south of Silicon Valley Boulevard, where the County owns the creek channel, the banks rise gradually on either side, and no homes or businesses are nearby, so flooding does not appear to be a concern. Trails in this section are also a good distance away from the creek channel itself, which is fenced off to prevent access. By contrast, in the areas north and south of the County owned section, the creek is narrower and deeper, and the banks are steeper, presumably creating more opportunity for flooding in heavy rains. There are also private properties, including both homes and commercial property, close to the immediate bank areas that the County owns. In these areas the creek is not fenced off from the adjacent trails. Because fencing might reduce enjoyment of these trails by hikers and bicyclists, we are not recommending that it be installed. We do recommend that the Department of Parks and Recreation review the County-owned parcels along Coyote Creek, to ensure that the parcels owned are those necessary for the park uses, and that any parcels where flood control may be a concern be sold to or exchanged with the Water District for other property or consideration.

As discussed earlier in this report, we generally believe that streams and other facilities used to carry away flood waters should be owned by the Santa Clara Valley Water District, commensurate with the "comprehensive water management for all beneficial uses and protection from flooding within Santa Clara County" that is among the objects and purposes of the District under its founding law. District staff disagrees, and stated during the exit conference for this study that they don't believe that the District Act gives the District sole responsibiliity for flood protection in the County. District staff also reported that the District currently owns only about 30 percent of the stream-related acreage in the County. However, there is clear precedent for the District to acquire County-owned property that is adjacent to and/or includes streams, for flood-control-related purposes. For example, in November 2004, the Board of Supervisors approved a three-way land transaction among the County parks and roads departments, and the District, which included the sale by the County to the District of two of its parcels along Coyote Creek, for the District's use as wetland mitigation for the impacts of District flood control maintenance of streams within the County.

We also note that any sale or transfer by the County of park lands would be subject to requirements of California Public Resources Code Section 5400 et. seq., which requires any entity acquiring park lands for a non-park purpose to provide money compensation or alternative lands to replace the property acquired. Depending on the amount of property relinquished by the County based on the recommendations of this report, it may be possible to receive money compensation for the properties, and improving park lands that remain in County hands, rather than having to receive substitute property from the District or buy it elsewhere.

12. 679-03-001, 679-03-002, 679-03-003, Coyote Creek near Coyote Road and Silver Creek Valley Road, City of San Jose

These are three parcels that include a section of Coyote Creek owned by the County as part of the Coyote Creek north and downstream of the areas just discussed. They were acquired from 1966 through 1969 from private owners as part of Coyote Park. In between two of these County-owned parcels there is a parcel owned by the Water District, 679-03-004, that includes a portion of the creek. Visual inspection indicated that this parcel includes an open drainage swale providing drainage from an adjacent parking lot for a commercial building, as well as pedestrian access from that property. At the time of our observation, the adjacent commercial property appeared to be vacant. The swale has been blocked off to prevent any vehicular access. The structure has no visible measures to prevent trash, sediment or other pollutants from entering the creek. We recommend that the County work with the District to determine if screens or some other measure could be taken to keep foreign materials from entering the creek via this structure. Because of the Water District-owned drainage swale adjacent to the County-owned properties, the Department of Parks and Recreation should review whether they should be sold or exchanged with the Water District for other property or consideration.

13. 679-03-001, 679-04-001, 679-04-002, 679-04-003, Coyote Creek off Coyote Road at Fontanoso Road, City of San Jose

These four parcels, totaling about 89 acres, include two sizeable parcels totaling about 52 acres between the creek and Coyote Road, north of Fontanoso Road in San Jose, a narrow 18-acre parcel comprising the east bank of the creek opposite the two larger properties, and a 19-acre triangular parcel, also east of the creek. The creek itself is in County ownership in this area as part of these parcels. Two properties were acquired in 1968 and 1969 from private owners, and a third was acquired in 1987 as a result of a condemnation action. The fourth parcel is one of those just discussed above. All the parcels were acquired to be part of the Coyote River Parkway.

In January 1987, the Board of Supervisors leased the entire 89-acre parcel at no cost to the City of San Jose, which agreed to develop five acres of the property for a neighborhood park, now known as Shady Oaks Park. The current lease extends through 2037 (50 years), with an optional 45-year extension.

Although the lease agreement between the County and City calls for the City to indemnify the County for any liability arising from the City's use of the property, we have the same concerns previously expressed regarding leased park property in the City of Campbell. This property, like that property, runs adjacent to a creek, in this case Coyote Creek, and is not fenced off, raising the possibility of injuries related to someone falling into the creek. The County would be more fully protected against liability by transferring this property to City ownership.

According to a staff report provided to the Board of Supervisors at the time it approved the lease with the City, the City proposed to develop only five acres of the property for neighborhood park uses, and our visual observation of the site confirmed that only a

small portion of the property has been improved. A significant share of the property has been left fallow, including an orchard on the site which the City was required by the lease to maintain "only so long as it is economically reasonable to do so," and which appears to have fallen into disrepair. Because so little of this property has actually been improved, we recommend that the County negotiate an amendment to its lease with the City to regain control over the undeveloped portion of this property, and then determine if there are other revenue-producing uses, such as converting the undeveloped portion to new housing, that might legally be pursued, or if there is another park-related use that could be made of the property. Conversion of the parcel to a non-park use would require replacement with other park property under State law, as previously discussed. If development of the property is not possible, the property should be sold or exchanged for other property or consideration. We also note that the undeveloped status of so much of this site also raises issues regarding use of the property for camping by transients and other unauthorized uses that could subject the County to liability.

14. 459-02-007, 459-03-007, 459-06-001/002/004, Almaden Expressway and Chard Drive east of Almaden Expressway, City of San Jose

These narrow parcels, totaling about 6.3 acres, were acquired from 1965 through 1973 in conjunction with construction of Almaden Expressway and Capitol Expressway, which intersect nearby. According to Assessor's parcel maps, one parcel includes the entire width of the Guadalupe River channel, and a second parcel includes about half the channel, and the bank on the west side of the river. The remainder of the channel and the opposite bank are part of an adjacent parcel owned by the Water District, which owns several parcels along the river in this area.

Although these parcels are fenced off from public access, the parcels appear to serve no useful purpose for the County, and should be sold or exchanged to the Water District for other property or consideration, since the Water District has the responsibility for flood control in the County.

15. 595-31-027, Penitencia Creek Road between Noble and Toyon avenues, City of San Jose

This narrow property is north of Penitencia Creek Road and appears to include the creek itself, and land on either side. Adjacent to this property is the Penitencia Canal, a manmade structure used to divert water from the creek into the District's Robert Gross Recharge Ponds which are adjacent to this property. Assessor's parcel maps identify this property as part of Penitencia Creek Park, but the property itself is not available for public use. However, there is a house on this property that is being used by the Santa Clara County Department of Parks and Recreation for ranger housing. Because this parcel, other than the house, provides no use to the County, the portions of the property that include the creek, other than the lot on which the house sits, should be sold or exchanged for other property or consideration to the Water District.

This property, and the next five sites discussed in this report, are the subject of three agreements among the County, the City of San Jose and the Water District regarding

development of various properties known collectively as Penitencia Creek Park. The initial agreement, approved in 1981, was for a term of 25 years, and provided for an extension of 25 years at the County's option, and generally provided for joint use and development of the property by the three agencies for recreational and flood control purposes. A second agreement approved in February 1987 more specifically enumerated the financial and management contributions the County, City and District were to make toward the development of the park properties for recreational and flood control purposes. A third agreement, approved in February 1992 by the Board, specifically authorized the City to build a community center upon a portion of the County-owned park property. The status of the community center property is discussed more fully below. Neither the 1987 nor 1992 agreements changed the original 25-year term of the 1981 agreement. Consequently, the Board must decide by July 2006 whether or not to provide written notice extending the agreement.

16. 599-16-104, Penitencia Creek Road between Toyon Avenue and Linda Vista Street, City of San Jose

This narrow property is just west of the property just mentioned, and includes Penitencia Creek property and bank area north of the road. While documents for the 1981 acquisition of this property identify it as part of Penitencia Creek Park, the property is not usable by the public, even for hiking, as there is no separation from often fast-moving traffic on Penitencia Creek Road. Because the property provides no use to the County, it should be sold or exchanged for other property or consideration to the Water District.

17. 254-19-040, Penitencia Creek east of North King Road, City of San Jose

This is a narrow 36,590-square-foot property that appears to include a portion of Penitencia Creek east of King Road. The property was acquired at no cost in 1985 from the San Jose Water Company, which has an adjacent parcel with a water tank, and is identified in the acquisition documents as being acquired for the Penitencia Creek Park project. The Water District owns parcels adjacent to this property, and also has easements across adjacent property owned by the City of San Jose. Based on visual inspection, this parcel does not directly adjoin any other portions of the park, and although there is some access to it from one side via a paved path on the City's property, the adjacent Water District properties are posted with "No Trespassing" signs. Because this property provides no use to the County, it should be sold or exchanged for other property or consideration to the Water District.

18. 591-17-020 & 591-18-013, Penitencia Creek Park, west of Piedmont Road, between Berryessa Road and Penitencia Creek Road, City of San Jose

Parcel 591-17-020 is an "L" shaped property bounded by Berryessa Road to the north and Penitencia Creek Road to the south. Adjacent to the County-owned property is Piedmont School, owned by the Berryessa Union School District, and a City of San Jose fire station. Parcel 591-18-013 is a horseshoe-shaped property just west of the other parcel, which wraps around another Berryessa Union property. The County owns most of Penitencia Creek in this area, but portions are owned by the Water District, in

conjunction with the District's Penitencia Creek Canal and the Robert Gross Recharge Ponds further east, into which water from the creek and from imported water sources is diverted for underground storage. The Canal, which is an open fenced-off ditch east of Piedmont Road, where it feeds the recharge ponds, goes underground west of Piedmont Road, emerging only to feed an additional recharge pond that serves as an amenity within Penitencia Creek Park itself. The City of San Jose's Berryessa Community Center is located on the easternmost parcel, 591-18-013, and was developed there pursuant to the 1992 agreement among the City, County and Water District permitting that use on this property.

As noted previously, the Board must decide by July 2006 whether to provide written notice extending the existing agreements with the City of San Jose and Water District for Penitencia Creek Park. At a minimum, the Board should not pursue extension of the agreement for parcel 591-18-013, which has been developed as a neighborhood park and community center for the City of San Jose, and should instead sell this property to the City or exchange it for other property or consideration. The property to the east, 591-17-020, which has been developed for more passive uses and is dominated by the recharge pond, could also be sold to the City, or could be retained by the County in conjunction with other portions of the Penitencia Creek Park chain the county owns.

19. 595-24-058, north of Penitencia Creek Road, east of Piedmont Road, City of San Jose

Assessor's records identify this parcel as 14451 Penitencia Creek Road. It is located between Penitencia Creek Road and the Penitencia Creek Canal, and includes the creek itself and land on both sides. According to Assessor's records, this parcel has improvements worth $51,958, and according to past lease records reviewed in the Clerk of the Board's office, the parcel at one time included several structures, including a home, which the County leased to others for use. However, the parcel was vacant at the time of our observation. Furthermore, a wood plank-and-steel bridge that at one time provided access across the creek to the property has fallen into disrepair, and now may be an attractive nuisance that could lead to injuries if someone attempted to cross it and fell. The property is bounded on the eastern side by the Water District's Robert Gross recharge pond. On the day of our observation, water from the pond was draining off into the adjacent creek, and was also flowing down the canal.

There currently is no effective public access to this property. The only available path adjacent to it is on the paved edge of Penitencia Creek Road, which in some portions would bring a pedestrian dangerously close to traffic. While it may be possible to provide a hiking trail on this property where it abuts the Penitencia Creek Canal, access to that portion of the property is blocked by an overflow channel between the canal and the creek, just east of Piedmont Road. A footbridge would need to be built across this channel to provide access. There is an existing gravel trail north of the canal, on the opposite side of the canal from the County's property, which is identified by a sign as part of the Penitencia Creek Trail. However, this trail, which leads to the Water District's recharge ponds, was fenced and closed off by a locked gate on the day of our observation, and appears to be on District property. If suitable access to the County's parcel cannot be provided, the property provides no useful purpose to the County, and

should be sold to the Water District or exchanged with the District for other property or consideration. Alternatively, the County might consider seeking an easement on the District's trail adjacent to the canal, in return for the County's parcel.

20. 592-20-074 & 592-20-075, south of Penitencia Creek Road, near Stonecrest Way, City of San Jose

These parcels, totaling about one-third of an acre, are essentially islands in the middle of larger properties owned by the Water District. One parcel was acquired to be part of Penitencia Creek Park, but is actually separated by the street from the park, and does not appear to be used. The second parcel was acquired for the construction of Penitencia Creek Road in 1964, and the remainder of the property is a remnant of the construction. These parcels serve no purpose for the County, and should be sold to the Water District or exchanged for other property or consideration.

21. 373-19-016, Rainbow Drive between Blaney Avenue and Bretmoor Way, City of San Jose

This is an 871-foot parcel just off Rainbow Drive, and comprises, according to the Assessor's parcel map, a portion of the channel for Rodeo Creek, near its confluence with Calabasas Creek. This is the remaining portion of a larger stretch of the creek that was formerly in County ownership, having been acquired from a former owner for drainage purposes. According to records obtained from the Clerk of the Board, in 1969 the Water District requested that the Board of Supervisors quitclaim the creek to them in 1969, so that the District could assume the maintenance responsibilities, in particular fixing an erosion problem that had been identified by the City of San Jose, which owns a park and other property west of the creek channel. The Board at that time did quitclaim most of the land, but because the property had been acquired in two separate grand deeds from the previous owner, and only one of the two deeds was specifically addressed in 1969, the County retained ownership of this parcel. Because the parcel does not appear to provide any use to the County, it should be sold to the Water District or exchanged for other property or consideration..

22. 537-06-014/537-06-007, near Alma Bridge Road, County of Santa Clara

These two parcels are among a number of properties in the County-governed area on the eastern end of Lexington Reservoir. According to an interview with Department of Parks and Recreation staff, they believed these parcels were included in a "Master Reservoir Lease" negotiated between the County and the Santa Clara Valley Water District in September 1996. Under that agreement, the Water District leased to the County, through 2016, property in and surrounding its reservoirs, with the County to "be fully responsible for the public recreational use on the above-described lands and in and on the water stored thereon." The lease provides for renewal at 20-year increments upon mutual agreement, and can be terminated by either party with six months written notice. The property included in the lease is identified in a series of maps attached to the lease, but not by specific parcel numbers or legal descriptions.

According to Parks Department staff, there is a trail, which pre-dated the lease agreement with the District, that the County maintains across a number of parcels near the reservoir, including the subject parcels. While Parks staff assumed that all the parcels were owned by the Water District, and therefore were subject to the lease agreement, Parks staff discovered subsequent to the signing of the lease that some parcels, including the subject properties, were not owned by the Water District, but were in private ownership. We confirmed by a review of the Assessor's computer system that this was the case. According to Parks staff, the private ownership of these parcels throws the status of the trail crossing these parcels into question, creating a potential liability issue for the County and the potential for the loss of trail access.

In response to the comments by County Parks staff, the District stated, and Parks staff agreed, that it was not necessarily the District's responsibility to ensure that the subject trail was only on the publicly-owned land governed by the lease. In the case of any trails to be constructed by the Parks Department on leased land, Parks staff reports that a construction permit from the District would be required, which would trigger a review of property ownership to ensure that a trail was built only on public property.

Based on the comments of County Parks staff and District staff, we recommend that Parks staff review the maps accompanying the Master Reservoir Lease agreement to identify areas where the District's ownership of property supposedly encompassed by the agreement is not fully certain. In such areas, the County should seek an amendment to the agreement defining more specifically, by Assessor's Parcel Numbers, survey descriptions or other data, the specific property covered by the lease agreement.

Parks staff concurs with this recommendation, and also indicated that when the lease comes up for renewal in 2016, they will seek to limit the scope of the lease only to specific parcels that the County actually needs for recreational purposes, and to the parcels that are in Water District ownership and can be legally leased. We also recommend that the Department of Parks and Recreation consult County Counsel as to methods that could be used to address the legal status of the subject parcels and the trail that crosses them, such as obtaining an easement for the trail from the current property owners.

Santa Clara Valley Water District

5750 ALMADEN EXPWY
SAN JOSE, CA 95118-3686
TELEPHONE (408) 265-2600
FACIMILE (408) 266-0271
www.valleywater.org
AN EQUAL OPPORTUNITY EMPLOYER

B/S Chair _____
BD of Supv. _____
Clerk ✓

DISTRICT BOARD OF DIRECTORS
ROSEMARY C. KAMEI
DISTRICT 1
JOE JUDGE
DISTRICT 2
RICHARD P. SANTOS
CHAIR, DISTRICT 3
LARRY WILSON
VICE CHAIR, DISTRICT 4
GREGORY A. ZLOTNICK
DISTRICT 5
TONY ESTREMERA
AT LARGE
SIG SANCHEZ
AT LARGE

STANLEY M. WILLIAMS
CHIEF EXECUTIVE OFFICER
LAUREN L. KELLER
CLERK OF THE BOARD

August 19, 2005

The Honorable Board of Supervisors
County of Santa Clara
70 West Hedding Street, 10th Floor
San Jose, CA 95110

Subject: Property Ownership Study

Dear Chair Kniss and Members of the Board:

This letter is in response to your management auditor's recent report on the property ownership study directed by the Board of Supervisors in October 2004.

Based on our review, we believe that the report makes no significant findings or recommendations, nor identifies any liabilities specific to the Santa Clara Valley Water District (District) for the properties identified in the report. In fact, only one of the 49 properties viewed by your auditor was identified as having been closed off by a fence indicating control of the property by the District (based on a District no trespassing sign attached). District staff has investigated this property and it appears that the fencing was installed as a means to prevent dumping and damage to public land. However, it is unclear who has actual ownership of the fence itself. The land is a vacated road right of way that appears to be in use by the adjoining neighbor. The District makes no use of the land and will remove the fence if it is determined that the District has ownership of the fence and this course of action is desired by the County.

Your management auditor also recommends that many of the County-owned parcels identified in the report be sold, transferred, or exchanged to the District since they pose some potential liability to the County, mainly because of their proximity to District-owned creeks and channels.

While the District has primary responsibility for flood control in the county, there is no mandate or other requirement that the District owns all properties in and around county creeks and channels. The District accomplishes its mission for flood protection and watershed management through effective use of its resources by acquiring rights of way and easements where necessary to perform its flood protection activities throughout the year. However, as with the recent property exchange agreement between the District and the County Roads and County Parks and Recreation departments for lands around the Stevens Creek Reservoir, the District will continue to work collaboratively with the County in identifying opportunities for property transfers or exchanges that will mutually benefit each organization.

The mission of the Santa Clara Valley Water District is a healthy, safe and enhanced quality of living in Santa Clara County through watershed stewardship and comprehensive management of water resources in a cost-effective, environmentally

Thank you for the opportunity to respond and comment on this report. We would be happy to answer any questions that you may have. We look forward to hearing what actions the Board of Supervisors will be taking on the recommendations from this report.

Sincerely,

Richard P. Santos
Chair/Board of Directors

cc: Board of Directors (7)
RPS:jz:mf
0811c-l.doc

Michael Murdter <Michael.Murdter@rda.sccgov.org> on 08/30/2005 05:09:18 PM

To: "'Jeff.Segol@cob.sccgov.org" <Jeff.Segol@cob.sccgov.org>
cc: Dan Collen <Dan.Collen@rda.sccgov.org>, Mike Griffis <Mike.Griffis@rda.sccgov.org>, Ron Jackson <Ron.Jackson@rda.sccgov.org>
Subject: SCVWD Property Ownership Study

Jeff,

Here are my comments on the study. Thanks for your patience.

#10. 290-22-154,Lawrence Expressway/Benton

- This parcel is on the southeast corner.
- As reported to the Finance & Government Operations Committee on October 6, 2004, a portion of this parcel will be required for a future intersection level-of-service project identified in the Comprehensive Expressway Planning Study. The balance of the parcel is potential future surplus. The Roads & Airports Department leases the parcel on a short-term basis each fall to a pumpkin/Christmas tree vendor to generate approximately $20,000 annually.

#11. 375-22-001,Lawrence Expressway

- Roads will enhance the fencing to block pedestrian access to the parcel and post signs as recommended.
- As I mentioned in my 7/25 e-mail, the Department is in discussions with the City of Cupertino relating to the feasibility of using part of the parcel for a creekside park. Also, the trail turns west over a new pedestrian bridge and continues along residential streets.

NOTICE: This email message and/or its attachments may contain information that is confidential or restricted. It is intended only for the individuals named as recipients in the message. If you are NOT an authorized recipient, you are prohibited from using, delivering, distributing, printing, copying, or disclosing the message or content to others and must delete the message from your computer.If you have received this message in error, please notify the sender by return email.